IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 153 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGANNATH JAYSHANKER BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 153 of 2001

MR ATUL H MEHTA for Petitioner No. 1

MS PB SHETH APP for Respondent No. 1

MR JV JAPEE for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 15/10/2003

ORAL JUDGEMENT

This is a revision application u/s.397 read with s.401 of the Code of Criminal Procedure, 1973 (for short,

"the Code") challenging the judgment and acquittal order dated 20/03/01 recorded by the learned Judicial Magistrate, First Class at Prantij, District Sabarkantha in Criminal Case No.1090/1997 under which the learned Magistrate acquitted the contesting respondents from offences punishable u/ss.325, 323, 447, 504, 506(2) read with s.114 of IPC.

2. It appears to be the case of the petitioner, original complainant, that on 14/06/97 at about 8.00 AM, he along with his wife and son were busy with agricultural work in his land at Village Aniyod. That at that time, the contesting respondents committed criminal trespass in respect of the said field and told the petitioner to sell away the said land to them. That they also gave abuses to the petitioner and to other members of his family. That thereafter, respondents no.2 and 3 inflicted blows on the petitioner by means of wooden loafs. That even threats were given to the petitioner and the members of his family.

3. On the same day, FIR was filed by the petitioner and the petitioner was referred to the Medical Officer for examination and treatment. Investigation was undertaken and at the end of investigation, charge sheet was filed on 01/07/97. Charge was framed. The son of the petitioner was examined. Thereafter, as the witnesses were not kept present by the prosecution, the contesting respondents submitted an application before the trial court stating that in view of the pronouncement of the Hon'ble the Supreme Court, the evidence of the prosecution may be closed. The trial court heard the parties and directed closure of evidence and since, there was the solitary evidence of the son of the petitioner, the trial court acquitted the contesting respondents from the aforesaid offences.

4. Feeling aggrieved by the said judgment and acquittal order of the trial court, the petitioner has preferred this revision application before this Court. It has been mainly contended here that the contesting respondents, being the accused persons, were also not present on several occasions before the trial court. That the trial court ought not to have closed the evidence of the prosecution in absence of witnesses, without ascertaining as to why the witnesses were not present. That the witnesses were present on several dates and the evidence was not recorded by the Court on those dates. That, therefore, the prosecution did not get a reasonable opportunity to place its case before the Court concerned and therefore, the judgment and acquittal

order are illegal and deserve to be set aside.

5. Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned APP has appeared on behalf of the State and Mr.J V Japee learned advocate has appeared for respondents no.2, 3 and 4. I have heard the learned advocates for the parties and have perused the papers. Incidentally, they have taken me through the judgment of the trial court and the evidence of the son of the petitioner, together with the FIR at page 10 and the medical certificate.

6. Now, it is a fact that the contesting respondents were charge-sheeted and thereafter, were charged for the aforesaid offences. The matter was then fixed for recording of evidence and the son of the petitioner was examined. Thereafter, evidence was closed by the trial court. Apparently, the evidence of the prosecution was closed at an application of the contesting respondents based on the decisions of the Hon'ble the Apex Court rendered in cases of 'Common Cause' (I) - A Registered Society Through Its Director V/s. Union of India & Ors., reported in 1997 (2) GLR 1297, 'Common Cause' (II) - A Registered Society Through Its Director V/s. Union of India & Ors. reported in 1997 (2) GLR 1302, Raj Deo Sharma (I) V/s. State of Bihar reported in 1999 (1) GLR 709 and Raj Deo Sharma (II) reported in 1999 (7) SCC 604.

7. However, the aforesaid decisions have been subsequently overruled by a subsequent decision of the Larger Bench of the Hon'ble the Supreme Court in the case of P.Ramachandra Rao V/s. State of Karnataka reported in 2002(2) G.L.H. 518.

8. In the subsequent decision of the Hon'ble the Supreme Court, it has been clearly laid down that the Court cannot fix outer time limit for the completion of trial. At the same time, if the witnesses have not been continuously kept present, it would be the discretion of the Court concerned, to decide whether to adjourn the case or whether to close the evidence.

9. In the present case, we find that the trial court has closed the evidence, on the basis of the earlier decisions of the Hon'ble the Supreme Court in the aforesaid four matters. It is also a matter on record that on some dates, the witnesses were present, but their evidence was not recorded. It is also a matter on record that on some dates even the contesting respondents, being the accused before the trial court, were absent and therefore, the trial court could not proceed ahead.

10. The learned advocate for the petitioner has given some details about the day to day proceedings before the trial court which can be shown as follows;

14.06.97 - Date of offence and date of FIR
01.07.97 - Filing of charge-sheet
23.10.97 - Papers supplied to the accused
28.12.98 - Charge was framed
28.01.99 - Witness not present
19.09.99 - Witness not present, despite service of summons
18.03.99 - Witness and accused present; The matter adjourned
12.04.99 - Accused not present
07.05.99 - Resolution of Bar not to work
03.06.99 - As above
01.07.99 - Accused present, witnesses not present
22.07.99 - Accused present, witnesses present; adjournment application by accused Ex.31
12.08.99 - Accused and witnesses present; adjourned for settlement
18.09.99 - Accused present; witnesses absent; fine imposed
16.10.99 - Accused and witnesses present; APP not present; adjourned for settlement
29.11.99 - Accused and complainant present; adjourned for settlement
31.12.99 - Accused present; witnesses not present; fine imposed
01.02.00 - Accused not present; exemption granted; witnesses present; adjourned for settlement
02.03.00 - Accused present; witnesses not present; complainant applied for adjournment
23.03.00 - Accused present; complainant absent; warrant issued to the complainant
19.04.00 - Application for cancellation of warrant
27.04.00 - Accused and complainant present; adjournment application by the complainant
29.05.00 - Witnesses present; the Presiding Officer on leave
30.06.00 - Accused absent; the advocate for the accused raised a dispute about the identity of the accused

and therefore, matter adjourned. The defence lawyer did not agree to pay witness bhatta and therefore, warrant issued against the accused.

08.08.00 - Accused absent; warrant reissued

03.10.00 - Warrant was cancelled

18.10.00 - Witnesses not present; summons reissued

17.11.00 - The Presiding Officer on leave; witnesses were present

09.01.01 - Accused, witnesses and APP present; evidence of PW-1 recorded ex.49; on the same date the accused submitted an application ex.50 for the closure of evidence of the prosecution. The prosecution submitted an application ex.51 for adjournment. The said application ex.51 was dismissed and the matter was argued ex.50.

29.01.01 - Accused no.2 and 3 not present; applied for adjournment ex.52

08.03.01 - Further statement of the accused recorded

20.03.01 - Judgment of acquittal was pronounced

11. The above facts clearly go to show that on several dates the witnesses were present and on several dates the accused were absent. On the last date PW-1 was present. His evidence was recorded and though application for adjournment was submitted ex.51, the said application was not granted and the application of the accused ex.50 for closing the evidence was allowed. Hence, the evidence was closed. This means that, on several dates the accused were absent and on several dates the witnesses were present, but, the matter could not proceed ahead. It is also a matter of record that adjournments were sought on the ground of settlement between the parties. It is required to be considered that except the offence punishable u/s.506(2) IPC, the remaining offences are compoundable and if the parties wanted to explore a possibility of settlement, then the prosecution and the prosecution witnesses cannot be blamed for the absence of the prosecution witnesses on some occasions.

12. When the accused were absent, the question of identity was raised and warrants were issued. Then, on the next adjournments, the witnesses may not be present

because they would be unaware as to whether the accused were arrested and whether they were likely to appear on the next dates.

13. In above view of the matter, it can be said that the prosecution witnesses were present on so many dates and same way, even the accused were absent on so many dates. Considering the aforesaid aspect of the case, I am of the view that the prosecution ought to get reasonable opportunity to place evidence before the trial court.

14. The learned advocate for the contesting respondents has heavily argued that sufficient time has gone and the witnesses may not be in a position to remember the facts. This may be a matter to be decided before the trial court as and when the evidence is produced. It may be that the witnesses may be able to remember the facts and therefore, on this count also, the revision cannot be dismissed.

15. It is also the argument of the learned advocate for the contesting respondents that the trial court could have accepted the testimony of the son of the petitioner, who was an eye witness, without the requirement of any further corroboration, but that has not been done and therefore, the acquittal should not be disturbed.

16. It is required to be considered that in view of the subsequent decision of the Hon'ble the Supreme Court, the closure of evidence of the prosecution is required to be set aside and the matter is required to be remanded to the trial court, for recording further evidence of witnesses.

17. It has also been contended by the learned advocate for the contesting respondents that the State has not preferred any acquittal appeal. There is no dispute about the same. The State has not preferred any acquittal appeal before this Court. At the same time, in view of the aforesaid four decisions of the Hon'ble the Supreme Court, the State might not have thought it proper to file acquittal appeal. However, when the said four decisions have been overruled by the latest pronouncement of the Hon'ble the Supreme Court, this Court is required to consider the impact of the said decision. On such consideration, it is found that the trial court was not justified in closing the evidence, at the instance of the contesting respondents, without providing a reasonable opportunity to the State to produce evidence on record. The trial court has totally omitted to consider the fact

that the witnesses were present in past on so many occasions and that the accused were not present in past on some occasions. It cannot, therefore, be said that there was some fault on the part of the prosecution in keeping the witnesses present.

18. The learned advocate for the petitioner has relied upon two decisions of the Hon'ble the Supreme Court in the case of Thakur Ram V/s. State of Bihar reported in AIR 1966 SC 911 and in the case of Kishan Swaroop V/s. Govt. of NCT of Delhi reported in AIR 1988 SC 990.

18.1 In AIR 1988 SC 990 (supra) the Hon'ble the Supreme Court has referred to a decision in the case of Chinnaswamy Reddy V/s. State of Andhra Pradesh reported in AIR 1962 SC 1788, wherein pertinent observations were made as follows;

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fir to appeal; but this jurisdiction should in our opinion be exercises by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."

Therefore, in the said decision, it has been observed that it is open to a High Court in revision to set aside an order of acquittal, even at the instance of private parties, though the State may not have preferred appeal. The Hon'ble the Supreme Court has, however, observed that this power is required to be exercised in exceptional cases. I am of the view that looking to the aforesaid set of facts, this is an exceptional case, in which the revisional powers are required to be exercised by this Court, with a view to see that substantial justice is done to the parties.

18.2 Even in AIR 1966 SC 911 (supra), it has been observed that barring a few exceptions, in criminal matters the party who is treated as an aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to

take all the steps necessary for bringing the person who has acted against the social interests of the community to book. Here also, I record a finding that this is an exceptional case, wherein the evidence of the prosecution was unnecessarily closed by the trial court, without considering the previous absence of the accused and presence of witnesses on so many occasions.

19. In that view of the matter, I am of the view that this is a fit case wherein the revision should be allowed and the judgment and acquittal order should be set aside. The only alternative left to this Court is to remand the case back to the trial court for further trial at the stage at which it was pending.

20. For the foregoing reasons, this revision application is allowed.

20.1 The judgment and acquittal order dated 20/03/01 passed in Criminal Case No.1090/1997 by the learned Judicial Magistrate, First Class at Prantij are set aside. The matter is ordered to be remanded back to the trial court for remaining trail.

20.2 The trial court will consider the provisions made in S.309 of the Code of Criminal Procedure, 1973 for day to day conduct of the trail, as has been interpreted by the Hon'ble the Supreme Court in the case of S.N.Singh V/s. State of U.P. reported in 2002(2) GLR 1039. The trial court will, naturally, deal with and decide the case independently and without being influenced by the observations made by it in the acquittal judgment or by the observations made by this Court in this judgment. Rule is made absolute.

(D. P. Buch, J.)

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